

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-123087-10

Date:

July 13, 2010

Legend:

Parent =

Subsidiary =

State A =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Business A =

Dear :

This letter responds to your letter dated May 10, 2010, as submitted by your authorized representatives, requesting a ruling that the Commissioner determine, under § 1.1502-75(b)(2) of the Income Tax Regulations, that Subsidiary joined in the making of the

initial consolidated federal income tax return filed by Parent for the period Date 2 through Date 3 within Year 1. The information in that letter is summarized below.

### **Summary of Facts**

Subsidiary is a State A corporation all the stock of which was acquired on or about Date 1 by Parent, a newly formed State A corporation. All Subsidiary stock has continued to be owned by Parent since the acquisition was consummated. Parent is engaged, through its subsidiaries, in Business A. Subsidiary is Parent's sole U.S. subsidiary.

Subsidiary filed a Form 1120 for the short period ending on Date 1 within Year 1. In turn, Parent filed a Form 1120 that included Subsidiary for the short period beginning on Date 2 and ending on Date 3 within Year 1. Parent and Subsidiary have continued to file consolidated federal income tax returns for all subsequent taxable years.

For the short period within Year 1 and for all subsequent taxable years, Parent filed a Form 851 ("Affiliations Schedule") that included Subsidiary, and for each of these taxable periods all income and deductions of Subsidiary were included in Parent's federal income tax return. However, Parent and Subsidiary inadvertently failed to file a Form 1122 ("Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return") in accordance with § 1.1502-75(h)(2).

### **Representations**

Parent and Subsidiary have made the following representations:

- (a) Except for the failure to timely file Form 1122, Parent and Subsidiary were eligible to file a consolidated federal income tax return for the taxable period beginning on Date 2 and ending on Date 3.
- (b) All income and deductions of Subsidiary were included in the consolidated federal income tax return timely filed by Parent for the taxable period beginning on Date 2 and ending on Date 3 and for all subsequent taxable years.
- (c) Neither Parent nor Subsidiary filed a separate federal income tax return for the taxable period beginning on Date 2 and ending on Date 3 or for any subsequent taxable year.
- (d) Subsidiary was included on Parent's Form 851 for the taxable period beginning on Date 2 and ending on Date 3 and for all subsequent taxable years.
- (e) As of the date of this request, the Internal Revenue Service has not notified Parent or Subsidiary concerning the failure to file Form 1122 with respect to Subsidiary for the

taxable period beginning on Date 2 and ending on Date 3 or for any subsequent taxable year.

### **Law**

Section 1501 of the Code provides that the making of a consolidated return shall be upon the condition that all corporations that at any time during the taxable year have been members of the affiliated group consent to all consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides that a group that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for its immediately preceding taxable year(s).

Section 1.1502-75(b)(2) provides that, if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the Affiliations Schedule (Form 851) for such taxable year. If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2).

### **Ruling**

Based solely on the information submitted and the representations made, we rule that, under § 1.1502-75(b)(2), Subsidiary is treated for purposes of § 1.1502-75(h)(2) as if it

had filed Form 1122 with the consolidated federal income tax return of Parent for the taxable period beginning on Date 2 and ending on Date 3. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in § 1501, Subsidiary is determined to have consented to all consolidated return regulations prescribed under § 1502 prior to the last day prescribed by law for the filing of such return.

### **Caveats**

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted on behalf of Parent and Subsidiary and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Mark S. Jennings  
Branch Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)